



2016-031

STATE OF ALABAMA
OFFICE OF THE ATTORNEY GENERAL

LUTHER STRANGE
ATTORNEY GENERAL

April 6, 2016

501 WASHINGTON AVENUE
P.O. BOX 300152
MONTGOMERY, AL 36130-0152
(334) 242-7300
WWW.AGO.ALABAMA.GOV

Honorable Carl E. Chamblee, Jr.
Municipal Judge
Trussville Municipal Court
Post Office Box 159
Trussville, Alabama 35173

Alternative Nicotine Products – Juveniles –
Municipal Courts – Jefferson County

Possession of an “e-cigarette” or electronic cigarette is possession of an alternative nicotine product under section 28-11-13(a) of the Code of Alabama.

A municipal court has authority to administratively adjudicate a complaint against a person under 19 for possession of an “e-cigarette” under section 28-11-13(a) if the municipality has adopted the offense as a municipal ordinance violation.

Dear Judge Chamblee:

This opinion of the Attorney General is issued in response to your request.

QUESTION

(1) Is possession of an “e-cigarette” possession of a tobacco product as that term is defined under section 28-11-13 of the Code of Alabama?

FACTS AND ANALYSIS

Section 28-11-13 governs the unlawful purchase, use, possession, or transportation of tobacco, tobacco products, or alternative nicotine products by minors. This provision states, in pertinent part, as follows:

(a) *It is unlawful for any minor to purchase, use, possess, or transport tobacco, tobacco product, or alternative nicotine product* within this state. It shall not be unlawful for a minor employee of a tobacco, tobacco product, or alternative nicotine product permit holder to handle, transport, or sell tobacco, tobacco product, or alternative tobacco product if the minor employee is acting within the line and scope of employment and the permit holder, or an employee of the permit holder who is 21 years of age or older, is present.

ALA. CODE § 28-11-13(a) (2013) (emphasis added).

The term “alternative nicotine product” is defined in section 28-11-2(1) of the Code of Alabama as follows:

The term alternative nicotine product includes electronic cigarettes.

An electronic cigarette is an electronic product or device that produces a vapor that delivers nicotine or other substances to the person inhaling from the device to simulate smoking, and is likely to be offered to, or purchased by, consumers as an electronic cigarette, electronic cigar, electronic cigarillo, or electronic pipe.

ALA. CODE § 28-11-2(1) (2013).

Under the established rules of statutory construction, words used in a statute must be given their natural, plain, ordinary, and commonly understood meaning, and where plain language is used, a court is bound to interpret that language to mean exactly what it says. *Ex parte Cove Properties, Inc.*, 796 So. 2d 331, 333-34 (Ala. 2000); *Ex parte T.B.*, 698 So. 2d 127, 130 (Ala. 1997). Based on the plain language of section 28-11-2(1), the possession of an e-cigarette or electronic cigarette would be considered possession of an alternative nicotine product. The possession, purchase, use, or transport of an e-cigarette by a minor would therefore be a violation of section 28-11-13(a).

CONCLUSION

Possession of an “e-cigarette” or electronic cigarette is possession of an alternative nicotine product under section 28-11-13(a) of the Code of Alabama.

QUESTION

(2) Does the municipal court have authority to adjudicate a complaint against a person under 19 for possession of an "e-cigarette"?

FACTS AND ANALYSIS

Your second question is due to be answered in the affirmative. Previously, this Office has determined that a municipal court has the authority to administratively adjudicate violations defined in section 28-11-13 if the municipality has adopted the offense as a municipal ordinance violation. Opinion to Honorable Robert B. Leavell, Administrator, Alabama Alcoholic Beverage Control Board, dated March 3, 1998, A.G. No. 98-00102.

CONCLUSION

A municipal court has authority to administratively adjudicate a complaint against a person under 19 for possession of an "e-cigarette" under section 28-11-13(a) if the municipality has adopted the offense as a municipal ordinance violation.

I hope this opinion answers your questions. If this Office can be of further assistance, please contact Monet Gaines of my staff.

Sincerely,

LUTHER STRANGE
Attorney General
By:



G. WARD BEESON, III
Chief, Opinions Section